

**ATTENTION: All of the redacted text in the emails that follow is protected by Exemption 5. Inter-agency or intra-agency communications that are protected by legal privileges.**

Here's the email again with the attachments this time.

**From:** Lisa Macchio [<mailto:Macchio.Lisa@epamail.epa.gov>]  
**Sent:** Tuesday, June 21, 2016 11:44 AM  
**To:** Macchio, Lisa <[Macchio.Lisa@epa.gov](mailto:Macchio.Lisa@epa.gov)>  
**Subject:** Fw: ESA 7(d) question - really quick

----- Forwarded by Lisa Macchio/R10/USEPA/US on 06/21/2016 11:43 AM -----

From: Candice Bauer/R5/USEPA/US  
To: Lisa Macchio/R10/USEPA/US@EPA,  
Cc: OW-OST-WQS-Coordinators  
Date: 09/19/2012 12:12 PM  
Subject: Re: ESA 7(d) question - really quick

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In 2005, we included this language in a memo to the file on ESA determinations for Indiana's triennial review:

USEPA has initiated consultation on its national Section 304(a) criteria recommendations. USEPA is deferring consultation on USEPA's approval of certain elements of Indiana's revised water quality standards to the ongoing national Section 304(a) consultation. These are USEPA's approval of Indiana's revision to express its cyanide criteria in terms of free cyanide and Indiana's revision to express its metals criteria in terms of dissolved metals. Both of these revisions are consistent with USEPA's recommendations regarding establishing criteria based on the bioavailable form of these pollutants. In neither case will the revision change the intended level of protection of the criteria. USEPA Region 5 and USFWS Region 3 will determine, after conclusion of the national consultation, whether any further consultation is needed at the regional level in regards to the action described above. This sequence will ensure that regional consultations benefit from the comprehensive consideration of scientific information undertaken nationally.

In 2008, we deferred consultation on IL's DO criteria to the national consultation. Here is the memo to file regarding that action.  
(See attached file: *Final IL DO MOA.pdf*)

I believe those are the two most recent examples of deferring consultation to the national consultation. More recently, (1) we have had a lot of variances where we have to consult, (2) we have had lots of criteria that do not have national recommendations and so we are doing regional consultations, or (3) we have been able to say that the action will have no effect (i.e., due to presence of only terrestrial species in action area). We do also have a variety of example memos regarding consultation where we are not finishing the regional consultation prior to approval of state/tribal standards (this is what I generally think of when I hear the term 7(d) since we mostly have dealt with this situation recently). In the 7(d) memos where we have initiated, but not yet completed, regional consultation, we explain that our action does not violate section 7(d) with regards to irretrievable spending of significant resources and/or potential for adverse impacts while the regional consultation is being completed. The two examples below show the range of information in a 7(d) memo from very detailed (in the case of WI thermal standards) and very succinct (variances).  
(See attached file: *Memo to File Section 7d.pdf*)

*(See attached file: Marinette ESA Memo variance.pdf)*

I hope this helps.

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Region 5 Water Quality Branch (WQ-16J)  
77 W. Jackson Blvd., Chicago, IL 60604  
Office Phone: 312-353-2106  
Fax: 312-697-2668  
Hours: Monday - Friday 9am to 3:30pm

▼ Lisa Macchio---09/19/2012 01:31:12 PM---Can I get a copy of the simplified rationale and the standard language? From: Candice Bauer/R5/USEPA

From: Lisa Macchio/R10/USEPA/US  
To: Candice Bauer/R5/USEPA/US@EPA,  
Cc: OW-OST-WQS-Coordinators  
Date: 09/19/2012 01:31 PM  
Subject: Re: ESA 7(d) question - really quick

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Can I get a copy of the simplified rationale and the standard language?

▼ Candice Bauer---09/19/2012 09:05:52 AM---We are trying to complete regional consultations where the adopted criteria depart from our EPA guid

From: Candice Bauer/R5/USEPA/US  
To: Lisa Macchio/R10/USEPA/US@EPA,  
Cc: OW-OST-WQS-Coordinators  
Date: 09/19/2012 09:05 AM  
Subject: Re: ESA 7(d) question - really quick

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We are trying to complete regional consultations where the adopted criteria depart from our EPA guidance (e.g., nutrients, thermal), where the criteria are less stringent than our national criteria (e.g., chloride criteria, variances), or where there are no national criteria (e.g., sulfate). In other cases where the criteria is clearly equal to or more stringent than the national criteria, we are deferring to the national consultation using either the standard language others shared or a simplified rationale similar to that of the standard language.

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▼ Lisa Macchio---09/17/2012 12:53:58 PM---How many of you are approving wqs and writing ESA 7(d) memos and saying things like we're waiting fo

From: Lisa Macchio/R10/USEPA/US  
To: OW-OST-WQS-Coordinators,  
Date: 09/17/2012 12:53 PM  
Subject: ESA 7(d) question - really quick

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How many of you are approving wqs and writing ESA 7(d) memos and saying things like we're waiting for the national ESA consultation... or something to that effect about the national consultation. [REDACTED]

[REDACTED]

Appreciate any information you can pass my way. Thanks